

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 264

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO VETERAN PREFERENCES; AMENDING SECTION 65-502, IDAHO CODE, TO REVISE DEFINITIONS AND TO DEFINE TERMS; AMENDING SECTION 65-503, IDAHO CODE, TO REVISE VERBIAGE RELATING TO PREFERENCES, TO PROVIDE A CORRECT CODE REFERENCE AND TO REMOVE PROVISIONS RELATING TO EMPLOYER OBLIGATIONS RELATING TO VETERAN PREFERENCES; AMENDING CHAPTER 5, TITLE 65, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 65-503A, IDAHO CODE, TO PROVIDE FOR EMPLOYER OBLIGATIONS RELATING TO VETERAN PREFERENCES; AMENDING SECTION 65-504, IDAHO CODE, TO REVISE PROVISIONS RELATING TO APPLICANTS WHO ARE PREFERENCE ELIGIBLE, TO PROVIDE FOR THE APPLICATION OF PREFERENCE IN CIVIL SERVICE POSITIONS, TO REVISE PROVISIONS RELATING TO THE ADDITION OF POINTS TO EARNED RATINGS, TO REVISE PROVISIONS RELATING TO PLACEMENT ON THE REGISTER AND TO REVISE PROVISIONS RELATING TO VETERANS DISCHARGED UNDER HONORABLE CONDITIONS WHO HAVE CERTAIN SERVICE-CONNECTED DISABILITIES; AMENDING SECTION 65-506, IDAHO CODE, TO REVISE VERBIAGE RELATING TO APPEALS, TO PROVIDE FOR NOTICE OF APPEAL, TO PROVIDE THAT CERTAIN APPLICANTS MAY FILE APPEALS DIRECTLY AND TO PROVIDE FOR COMMENCEMENT OF THE THIRTY-FIVE DAY PERIOD OF APPEAL; AND AMENDING CHAPTER 5, TITLE 65, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 65-512, IDAHO CODE, TO PROVIDE FOR CERTAIN EDUCATION AND TECHNICAL ASSISTANCE BY THE DIVISION OF VETERANS SERVICES AND THE DEPARTMENT OF LABOR.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 65-502, Idaho Code, be, and the same is hereby amended to read as follows:

65-502. DEFINITIONS. As used in this chapter:

(1) "Applicant" means an individual applying for a position with a public employer.

(2) "Armed forces" means the army, navy, marine corps, coast guard, air force, and the reserve components thereof.

(3) "Civil service position" means a position for which the public employee is selected from a pool of applicants through a competitive examination, a merit system or any other rating system based on experience and qualifications.

(24) "Disabled veteran" means those ~~honorably~~ veterans separated ~~veterans~~ under honorable conditions who:

(a) Qualify as disabled veterans because they have served on active duty in the armed forces and have a current service-connected disability of ten percent (10%) or more or are receiving compensation related to a service-connected disability including retirement benefits or pension from the military or the department of veterans affairs; or

(b) Are purple heart recipients.

(35) "Honorable conditions" means an honorable discharge or a general discharge "under honorable conditions."

(46) "Initial appointment" means the first time a qualified veteran is hired by a county or a municipal government or the state, provided however, subsequent separation from the county, municipal government or the state shall not result in the award of new preference or preference points with that governmental entity. "Initial appointment" shall not include:

(a) Jobs held by patients, inmates or students in or enrolled at a state institution;

(b) Temporary or casual employment; or

(c) An office filled by election.

(57) "Key employee" means an individual specifically hired for an "at will" ~~or nonclassified position for which there is no selection process, such as a position as a private secretary or deputy of an official or department who~~ that is not a civil service position and where:

(a) The position requires an advanced degree and the exercise of independent judgment for a majority of the public employee's duties;

(b) The primary duty of the position is the management of a department or subdivision of the public employer and the position requires the exercise of independent judgment for a majority of position duties;

(c) The primary duty of the position is administrative work arising from the management of a department or subdivision of the public employer or administrative work arising from the exercise of the duties of an elected official and the public employee holds a confidential relationship to the appointing or employing officer or elected official; or

(d) The primary duty of the position is to provide advice or consultation to an elected official and the public employee holds a confidential relationship to the elected official.

(68) "Military duty" means training and service performed by an inductee, enlistee or reservist or any entrant into a component of the armed forces of the United States, provided "military duty" shall not include active duty training as a reservist in the armed forces of the United States or as a member of the national guard of the United States where the call is for training only.

(79) "Position" means a job held by a public employee but shall not include:

(a) A job held by a patient, inmate or student in or enrolled at a state institution;

(b) Temporary or casual employment; or

(c) An office filled by election.

(10) "Preference eligible" means an individual eligible for preference under section 65-503, Idaho Code.

(811) "Public employee" means any person holding a position in public employment.

(912) "Public employer" means any government, department or agency mentioned in subsection (103) of this section employing a public employee in a position.

(103) "Public employment" means employment ~~of~~ by the government of this state, or ~~of~~ by any county, municipality or other political subdivision of the state, including any department or agency thereof.

(114) "Register" means a list of names of persons who have been determined to be eligible for employment in a classified civil service position as determined on the basis of examination and merit factors as established in a civil service system.

(125) "Service-connected disability" means that the veteran is disabled due to injury or illness that was incurred in or aggravated by military service as certified by the federal veterans administration or an agency of the department of defense.

(136) "Temporary or casual employment" means employment for a brief, nonrecurrent period where there is no reasonable expectation that such employment will continue indefinitely or for a significant period of time.

(147) "Veteran" means any person who has been discharged or released from active duty in the armed forces under honorable conditions and has:

(a) Served on active duty in the armed forces during a war, in a campaign or expedition for which a campaign badge has been authorized, or during the period beginning April 28, 1952, and ending July 1, 1955;

(b) Served on active duty as defined in 38 U.S.C. section 101(21) at any time in the armed forces for a period of more than one hundred eighty (180) consecutive days, any part of which occurred after January 31, 1955, and before October 15, 1976, not including service under 10 U.S.C. section 12103(d) pursuant to an enlistment in the army national guard or the air national guard or as a reserve for service in the army reserve, naval reserve, air force reserve, marine corps reserve or coast guard reserve;

(c) Served on active duty as defined in 38 U.S.C. section 101(21) in the armed forces during the period beginning on August 2, 1990, and ending on January 2, 1992; or

(d) Served as may be further defined in ~~38~~ 5 U.S.C. section ~~101(11)~~ 2108.

SECTION 2. That Section 65-503, Idaho Code, be, and the same is hereby amended to read as follows:

~~65-503. ELIGIBILITY FOR PREFERENCE TO BE GIVEN QUALIFIED VETERANS, SPOUSES, WIDOWS AND WIDOWERS BY PUBLIC EMPLOYERS. (1) Eligibility~~ The following individuals are eligible for preference.

~~(a1)~~ (a1) Veterans and disabled veterans as defined in section ~~56-502~~ 65-502, Idaho Code;

~~(b2)~~ (b2) A widow or widower of any veteran as long as he or she remains unmarried;

~~(e3)~~ (e3) The wife or husband of a service-connected disabled veteran if the veteran cannot qualify for any public employment because of a service-connected disability.

~~(2) Employer obligations.~~

~~(a) Public employers must give notice in all announcements and advertisements of vacancies that preference in appointment will be given to eligible veterans, and application forms must inquire whether the applicant is claiming veteran's preference and whether the applicant has previously claimed such a preference. An applicant claiming preference is responsible for providing required documentation at the time of mak-~~

ing application. The employer must inform applicants of the requirements for documentation.

(b) In all public employment, excluding key employee positions, the hiring official shall give preference to the employment of veterans.

(c) An application for appointment to a public employment position will be accepted after the closing date of the examination from a person who was serving in the armed forces, or undergoing service-connected hospitalization up to one (1) year following discharge. The application must be submitted within one hundred twenty (120) days of his or her separation from the armed forces or hospitalization and prior to the expiration of any register established as a result of the examination.

(d) A disabled veteran may file an application at any time up until a selection has been made for any position for which a register is then maintained as a source for future job openings, or for which a register is about to be established, provided he or she has not already been examined twice for the same position and grade for which application is made, does not have current eligibility on that register, or is not serving in a competitive position in the same grade for which application is made. If a register is not used as part of the selection process, a disabled veteran may file an application after the closing date, but such application will only be considered if a selection has not been made and the selection process is still active.

(e) An appointing authority may refuse to accept an application from an otherwise qualified veteran who is deemed unqualified through his or her actions. Examples of such actions include dismissal for cause from a public entity, a felony conviction, or conduct unbecoming a public employee. Such refusal must be supported by good cause and is appealable pursuant to section 65-506, Idaho Code.

SECTION 3. That Chapter 5, Title 65, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 65-503A, Idaho Code, and to read as follows:

65-503A. EMPLOYER OBLIGATIONS. (1) Public employers must give notice in all announcements and advertisements of vacancies that preference in appointment will be given to preference applicants. Application forms must inquire whether the applicant is claiming veteran's preference and whether the applicant has previously claimed such a preference. An applicant claiming preference is responsible for providing required documentation at the time of making application. The employer must inform applicants of the requirements for documentation.

(2) In all public employment, excluding key employee positions, the hiring official shall give preference to preference eligible applicants.

(3) An application for appointment to a position will be accepted after the closing date of the examination from an applicant who was serving in the armed forces, or undergoing service-connected hospitalization up to one (1) year following discharge. The application must be submitted within one hundred twenty (120) days of the applicant's separation from the armed forces or hospitalization, prior to the expiration of any register established as a result of the examination, and prior to the selection for the position.

(4) A disabled veteran may file an application at any time up until a selection has been made for any position for which a register is then maintained as a source for future job openings, or for which a register is about to be established, provided he or she has not already been examined twice for the same position and grade for which application is made, does not have current eligibility on that register, or is not serving in a competitive position in the same grade for which application is made. If a register is not used as a part of the selection process, a disabled veteran may file an application after the closing date, but such application will only be considered if a selection has not been made and the selection process is still active.

(5) An appointing authority may refuse to accept an application from an otherwise qualified preference eligible applicant who is deemed unqualified through his or her actions. Examples of such actions include dismissal for cause from a public entity, a felony conviction, or conduct unbecoming a public employee. Such refusal must be supported by good cause and is appealable pursuant to section 65-506, Idaho Code.

SECTION 4. That Section 65-504, Idaho Code, be, and the same is hereby amended to read as follows:

65-504. BASIC PREFERENCE AND ADDITION OF POINTS TO COMPETITIVE EXAMINATION RATINGS. (1) An individual applicant who qualifies for a veteran's employment preference is preference eligible is entitled to a preference in initial appointment with a public employer over other applicants for the same position who are not more qualified.

(2) Application of preference in civil service positions:

(a) Five (5) percentage points shall be added to the earned rating of any veteran and the widow or widower of any veteran as long as he or she remains unmarried, ~~when required to take competitive examination for any position in any state department, county or municipal government, which may now or which may hereafter require competitive examination under merit system or civil service plan of selecting employees.~~ The names of all five (5) point preference eligibles ~~resulting from any merit system or civil service examination~~ applicants shall be placed on the register in accordance with their augmented rating. The additional points added by reason of veteran's preference shall be used only for the purpose of initial appointment and not for the purpose of any promotion, transfer or reassignment.

(3b) Ten (10) percentage points shall be added to the earned rating of veterans discharged under honorable conditions who qualify as disabled veterans because they have served on active duty in the armed forces at any time and have a current service-connected disability of ten percent (10%) or more. Alternatively, ten (10) percentage points shall be added to the earned rating of the widow or widower of any disabled veteran as long as he or she remains unmarried or the spouse of any eligible disabled veteran who cannot qualify for any public employment because of a service-connected disability. The names of all ten (10) point preference eligibles ~~resulting from any merit system or civil service examination~~ applicants shall be placed on the register in accordance with their augmented rating. The additional points added by reason of vet-

1 eran's preference shall be used only for the purpose of initial appoint-
 2 ment and not for the purpose of any promotion, transfer or reassignment.

3 (4c) Veterans discharged under honorable conditions who served on ac-
 4 tive duty in the armed forces at any time and have a current service-con-
 5 nected disability of thirty percent (30%) or more shall be offered an
 6 interview if they are one (1) of the ~~top ten (10)~~ qualified applicants on
 7 the register for the position. If applicants are not ranked, an inter-
 8 view must be offered to such veterans who fully meet all qualifications
 9 for the position. Notwithstanding this subsection, employers shall not
 10 be required to interview more than a total of ten (10) applicants re-
 11 gardless of the number of such qualified veteran applicants.

12 SECTION 5. That Section 65-506, Idaho Code, be, and the same is hereby
 13 amended to read as follows:

14 65-506. FAILING OR REFUSING TO GIVE PREFERENCE -- CIVIL LIABILITY. (1)
 15 ~~Individuals~~ Applicants who believe they have been denied a right or bene-
 16 fit under this chapter may file an appeal with the governing body of ~~such the~~
 17 jurisdiction or unit of government within thirty-five (35) days of the al-
 18 leged denial of preference. If an applicant has notified the public employer
 19 of the applicant's eligibility for preference pursuant to section 65-503A,
 20 Idaho Code, the public employer shall provide notice of the appeal process
 21 at the conclusion of the selection process. ~~If an the public employer does~~
 22 ~~not initiate the appeal process does not exist for that jurisdiction or unit~~
 23 ~~of government within thirty-five (35) days of a written request by the ap-~~
 24 ~~plicant, the complainant applicant may file an appeal directly in district~~
 25 ~~court pursuant to subsection (3) of this section. The thirty-five (35) day~~
 26 ~~period for appeal shall commence upon the issuance of notice of the appeal~~
 27 ~~process by the public employer. If the public employer fails to issue such~~
 28 ~~notice, the thirty-five (35) day period for appeal shall commence when the~~
 29 ~~applicant becomes aware that he was not selected for the position.~~

30 (2) The division of veterans services is authorized and directed to is-
 31 sue rules for the enforcement of this chapter. Such rules shall include, but
 32 are not limited to, procedures public employers may implement for an inter-
 33 nal process which must be exhausted prior to gaining access to the courts.

34 (3) Any public employer who deliberately or willfully refuses or fails
 35 to give preference to qualified veterans required by the provisions of this
 36 chapter shall be subject to writs of mandate pursuant to sections 7-301
 37 through 7-314, Idaho Code, and if found in violation of any such provisions
 38 shall be required to pay the costs of suit and reasonable attorney's fees
 39 incurred in such action, and may further be required to employ or reemploy
 40 the veteran, and shall be required to pay as damages such amount as the court
 41 may award, but in no event shall the amount of such damages and costs of suit
 42 exceed the sum of five thousand dollars (\$5,000) or ten percent (10%) of the
 43 annual salary of the position, whichever is higher. Such action must be
 44 commenced not more than one hundred eighty (180) days from the alleged denial
 45 of preference, provided however, applicants for classified state employment
 46 remain subject to the procedures set forth in section 67-5316, Idaho Code.
 47 If an appeal process is in place pursuant to subsection (1) of this section,
 48 the one hundred eighty (180) days will not begin until that process has been
 49 exhausted.

1 SECTION 6. That Chapter 5, Title 65, Idaho Code, be, and the same is
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
3 ignated as Section 65-512, Idaho Code, and to read as follows:

4 65-512. EDUCATION AND TECHNICAL ASSISTANCE. To the extent of funds
5 available therefor, the division of veterans services and the department of
6 labor are authorized to provide programs of education and technical assis-
7 tance to public employers, veterans and other interested parties concerning
8 the provisions of this chapter.